IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15287 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI ALIAS KARMANBHAI NAGARBHAI CHUNARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15287 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 05th of October, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 05th of October, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact of filing a solitary crime against the petitioner under the Bombay Prohibition Act before Prohibition Police Station, Western Zone, on 03rd of October, 2004. It was alleged that the petitioner was found in possession of 210 liters of prohibited country liquor. After going through exhaustively the investigation papers in the above said crime, the detaining authority concluded that the petitioner was dealing in storing, selling and transporting prohibited liquor. The detaining authority concluded that the petitioner was bootlegger within the meaning of the PASA Act. The detaining authority also concluded that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. In view of the detaining authority, the bootlegging activities of the petitioner were required to be prevented forthwith and after considering other remedies available against the petitioner under the general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act to prevent his bootlegging activities forthwith. The detaining authority therefore passed the order of detention, as aforesaid, which is under challenge in this petition.

3. Learned Advocate Ms. Subhadraben G Patel for the petitioner and learned AGP Ms. Hansa B Punani for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue as to whether the detaining authority applied mind properly to the relevant material placed before him in arriving at the subjective satisfaction.

5. The grounds of detention reveal that the petitioner was in judicial custody when the order of detention was served and executed upon him. In this

respect, the detaining authority reached to the subjective satisfaction that though the petitioner was in judicial custody at the time of execution of the detention order, but at any time he was likely to file an application for bail in the court and was likely to be released on bail. The detaining authority also reached to the subjective satisfaction that on so releasing the petitioner on bail, he was likely to continue his illegal activities.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT,as reported in AIR 2000 SC 3675. The Apex Court observed that there must be cogent materials before the Officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and detention order based on such material was held liable to be quashed.

7. In the present case, it is clear that there was no material at all placed before the detaining authority to infer that the petitioner was likely to move an application for bail. Likewise, there was no material at all placed before the detaining authority to conclude that on so moving an application for bail by the petitioner he was likely to be released on bail. Thus, the subjective satisfaction arrived at by the detaining authority that on releasing on bail, the petitioner was likely to continue his illegal activities, is based on no material at all. The subjective satisfaction arrived at by the detaining authority therefore is not valid, legal and in accordance with law. The order under challenge therefore is required to be quashed on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 5th of October, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Kanubhai alias Karmanbhai Nagarbhai Chunara is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)